UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/497,071	02/02/2000	Linda I, Hoffberg-Borghesani	LIH-14	7065

10037   7590   11/15/2007
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EXAMINER
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ART UNIT	PAPER NUMBER
2623	

MAIL DATE	DELIVERY MODE
11/15/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Advisory Action **Before the Filing of an Appeal Brief**	Application No. 09/497,071	Applicant(s) HOFFBERG-BORGHESANI ET AL.
		Examiner Jason P. Salce	Art Unit 2623	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED <u>12 October 2007</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

    a) ☒ The period for reply expires <u>3</u> months from the mailing date of the final rejection.

    b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

         Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

<u>NOTICE OF APPEAL</u>

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

<u>AMENDMENTS</u>

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

    (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);

    (b) ☐ They raise the issue of new matter (see NOTE below);

    (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

    (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

         NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

    The status of the claim(s) is (or will be) as follows:

    Claim(s) allowed: _____.

    Claim(s) objected to: _____.

    Claim(s) rejected: <u>*155-193*</u>.

    Claim(s) withdrawn from consideration: _____.

<u>AFFIDAVIT OR OTHER EVIDENCE</u>

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome <u>all</u> rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

<u>REQUEST FOR RECONSIDERATION/OTHER</u>

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: <u>see continuation sheet.</u>

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.

13. ☐ Other: _____.

JASON SALCE
PRIMARY PATENT EXAMINER

Jason P Salce
Primary Examiner
Art Unit: 2623

Continuation of Item 11 from Advisory

112 Rejections:

Regarding the 112 1st Paragraph rejections, Applicant has attempted to show

supports for the claim limitations by pointing to multiple embodiments and examples in

the specification. However, these portions of the specification fail to teach how the

multiple embodiments could be implemented within the same system. Therefore, the

rejections stand.

Art Rejections:

In regards to claims 155-16 and 160-161, Applicant argues that Vogel fails to

teach or suggest that after the channel is changed, the prior selection is retained, and

thus Vogel does not teach, "storing data representing previously selected media".

The examiner disagrees and notes that Vogel clearly states that the real-time

data is stored after a channel change (**see Column 3, Lines 62-66**), therefore Vogel

teaches storing data (**real-time data**) representing previously selected media (**because**

the real-time data is received after a channel change, the real-time is

representative of previously selected media).

Furthermore, the examiner notes that the claim limitations are so broad that

Vogel clearly provides additional sets of data that is stored and representative of

previously selected media (**see Column 5, Lines 26-29 for storing a list of programs**

previously selected for recording). The examiner further notes that no distinction in the claims that the program must be broadcast before or after selection.

Applicant also argues that Vogel performs no search and that the channel identifier of the selected channel is used as an index to reference a single listing in the EPG, and no search of the contents of the EPG is performed.

The examiner disagrees and notes that the claim limitations are broad and that the claim limitations state, "automatically performing a search of said available media <u>for</u> <u>a correspondence to data</u> **representing content characterizes of the previously** **selected media**". The examiner notes that accordingly to the claims, a search merely requires the searching of available media to additional data, where the data is representative of content characteristics of the previously selected media. Therefore, since a user can press a key and activate an EPG, the system internally must search for currently schedule program data and data representative of previously selected programs from among the entire database of EPG information (**which spans multiple** **days**) stored by the system (**see Figure 4 and Column 3, Lines 50-55**). Further note that since the data is being interpreted as the real-time data, Vogel clearly teaches that real-time data represents content characteristics of the previously selected media (**see** **Column 3, Lines 59-66**).

Further, Vogel clearly teaches that when an EPG is selected the system displays EPG information for both current programs and programs that are selected for recording (**see Column 5, Lines 13-20 and further note Column 5, Lines 26-29 for displaying**

an asterisk next to programs that have been previously selected for recording,

therefore upon initiation of an EPG by the user, the system clearly processes the

EPG data and the previously selected media data and determines a

correspondence to data representing content characteristics (*time, rating, day,*

channel and title*) of the previously selected media (*further note Figure 4 for

displaying different content characteristics for both current and recorded

programs, which would be the result of searching the available media for a

correspondence to data representing content characteristics of the previously

***selected media*).**

Also as noted above, in the case of the alternative interpretation based on the

broad claim limitations, Vogel also discusses at Column 6, Lines 54-61 where a

comparison is performed when a current program identification signal is compared to a

list of programs selected form the EPG for recording. Therefore, since the available

media can be interpreted as the selected program and the data can be interpreted as

one of the program in the list of recorded program, clearly a search is being performed

of said available media for a correspondence to a program previously selected for

recording (**in order to determine if the currently selected program should be**

recorded or not), where the previously selected program is representative of content

characteristics.

Applicant further argues that the term "characteristics" is pluralized, thus since

Vogel only matches a single identifier of the currently selected channel to determine the

correct EPG listing, only a single characteristic is matched. Again, the claim limitations

are broad and only states that a search is automatically performed of said available

media for a correspondence to "data", where the "data" is representative of content

characteristics of the previously selected media. Therefore, since a single channel

identifier (the available media), which identifies the currently selected program, is

compared to a list of previously selected program for recording, a single program from

the list of previously selected programs for recording represents content characteristics,

because the program itself has a time, channel and rating (**see Figure 4**).

Applicant further argues that Vogel does not teach or suggest that any

notification is issued for available media having characteristics in any way

corresponding to the previously selected media. The examiner disagrees and notes

that Vogel clearly discloses that when a button on the remote control is pressed the

electronic system of Vogel automatically processes the request and notifies the user of

available media (**current column of Figure 4**). The examiner further notes that the

programs listed in the available media column of Figure 4 has characteristics

corresponding to (**time, channel, rating**), but not identical to previously selected media

(**again note Figure 4 for the record column having characteristics such as time

and channel that correspond to the characteristics in the current column, but are

not identical to**).

Applicant further argues that the claim specifically requires that the automatically

issued notification exclude identical "previously selected media". The examiner

disagrees and notes that the claim requires that the automatically issued notification

relates to available media, and that the available media has characteristics

corresponding to, but not identical to previously selected media. Again, see the

arguments above for how Vogel reads on these claim limitations.

Applicant also argues that the filtering of Vogel is in no way dependent on the

characteristics of the prior media selection by the user, and therefore has no way of

determining correspondence. The examiner disagrees and notes that Figure 4 of Vogel

has two columns, "current" and "record". Figure 4 clearly displays only available media

(current column) and previously selected programs (record column), therefore clearly

notifying the user of previously selected programs based on the classification filtering

taught by Vogel (**further note Column 4, Line 40 through Column 5, Line 7**).

Furthermore, the EPG information (periodic data) as well as the real-time data both

includes the classification as one of the characteristics (**see Column 3, Lines 50-66**).

In regards to claims 156 and 161, see the examiner's rebuttal above.

In regards to claim 160, Applicant argues that Vogel does not teach a theme.

The examiner disagrees and notes that the second definition from the top, cited by the

Applicant clearly reads on the various themes of Vogel.

In regards to claim 162, Applicant argues that Vogel does not teach a degree of correspondence. The examiner disagrees and notes that Vogel's classification characteristic clearly represents a degree of correspondence (**see the third definition provided by applicant, where the Adult "A" classification clearly represents the seriousness of adult content in a movie**).

Referring to claim 164, Applicant argues that Vogel does not teach a user interface list dependent on "a signal dependent on a degree of said correspondence". The examiner disagrees and notes that Vogel's classification characteristic clearly represents a degree of correspondence (**see the third definition provided by applicant, where the Adult "A" classification clearly represents the seriousness of adult content in a movie**).

Regarding claim 165, Applicant argues that Vogel does not teach an adaptive algorithm. The examiner disagrees and notes that when different classifications are selected in Figure 4 a different set of programs will be displayed, therefore the algorithm used to determine what programs to display in the user interface is adaptive based on the classifications required for display in the user interface of Vogel.

Applicant further sites a definition from Wikipedia. The examiner notes that Wikipedia is not a recognized source of information by the Patent Office. A Wiki is a source for users to enter information about a particular subject, even if the information is

not factually correct. Applicant is further reminded that any definition pulled Wikipedia is

an up-to-date definition, while Applicant's specification dates back to 1991. Wikipeida's

up-to-date definition could have meant something completely different 16 years ago.

The same applies for the other definitions that Applicant has cited from various

websites. The examiner recommends presenting the definition of the term listed in the

claim language as defined in Applicant's own specification.

Referring to claim 174, see the examiner's rebuttal above.

Referring to claim 175, Applicant argues that Vogel does not teach automatically

generating data representing characteristics of media. As cited by the examiner, data

transmitted from a cable headend generates the data to be transmitted to the system of

Vogel (**see again Column 3, Lines 37-45 and 59-66**). Further note that the claims are

broad and generation could be from the point Vogel, extracts and decodes the EPG

information from the television signal, stores the information in RAM or when the data is

retrieved from RAM and displayed to the user. Again, the Applicant presents multiple

definitions from the Internet, however the Applicant has not argued the term

"generating" in view of Applicant's own specification.

Referring to claim 176, Applicant argues that Vogel does not teach that the data

representing characteristics comprises a descritiption of media content. The examiner

disagrees and notes that the classification field clearly indicates description of the media

content, because a classification can be used to describer whether or not a program is suitable for viewing by a child (**see Column 3, Lines 54-55**).

Arguments regarding claims 175, 177 and 178 will not be considered because of the change in scope presented in claim 177 based on the recent amendment.

In regards to claim 179, Applicant argues that similar distinctions are drawn to the Applicant's arguments regarding claim 177, however, from the Applicant's remarks it is not clear how the claim terminology of claim 179 relates to the claim terminology of claim 177. As far as the examiner can determine, claims 177 and 179 recite content characteristics and content parameters instead of simply characteristics. The examiner notes that the terms content characteristics and content parameters do not distinguish over Vogel art of record. Vogel teaches title of a program, which clearly, a title is a characteristic of content (**the program**).

In regards to the arguments of claims 180-183, see the examiner's rebuttal above.

In regards to claim 187, Applicant argues that the graphic of Vogel that links a viewer to more descriptional information about a video program, is not a hypertext entry. Again, the Applicant has used Wikipedia to cite various terms and uses of hypertext entries. Again the examiner notes that Wikipedia is not a recognized source of

information by the Patent Office. A Wiki is a source for users to enter information about a particular subject, even if the information is not factually correct. Applicant is further reminded that any definition pulled Wikipedia is an up-to-date definition, while Applicant's specification dates back to 1991. Wikipeida's up-to-date definition could have meant something completely different 16 years ago. Hypertext is simply a link to additional information, which is clearly disclosed by Vogel.

Referring to claims 157-159, Applicant argues that the combination of Vogel and Young do not disclose the claimed limitations.

Applicant states that one might suppose that if Vogel received an EPG such as that according to Young, and provided software for filtering the listing for selected themes, then this represents the architecture proposed by the Examiner. The examiner does not understand the Applicant's argument. If the combination of Vogel and Young provides the architecture proposed by the Examiner, then clearly the claim limitations are met. After reviewing the remaining arguments regarding claim 157, the examiner believe the Applicant is misrepresenting what the combination of Vogel and Young is proposed to accomplish.

Although Vogel clearly teaches an EPG that allows a user to enter classifications, Vogel does not specifically state that the EPG is organized according to the selected classifications. For example, Figure 4 displays the EPG with the R rating deselected, but clearly Rambo, which has an R rating is being displayed. Therefore, Vogel would benefit from Young (as well as meet the claim limitations of claim 157) by adding proper

a proper filtering technique, so that the EPG would only display classifications enabled by the viewer.

Furthermore, Applicant further states that because Vogel fails to teach characteristics corresponding to, but not identical to previously selected media, as well as Young not curing this deficiency, the claim limitations are not met. See the examiner's rebuttal above for Vogel teaching these claim limitations.

Referring to claims 158-159, see the examiner's rebuttal above.

Referring to claim 166, see the examiner's rebuttal of claim 162 (above).

In regards to claims 167 and 190-191, Applicant provides not arguments on how Campbell does not provide a financial transaction, which is absent from Vogel. Therefore, the rejections stand. Campbell clearly discloses providing a financial transaction used in a pay-per-view system and adding this functionally would clearly benefit Vogel (as stated in the previous Office Action).

Referring to claim 168, Applicant argues that Vogel fails to teach a recommendation. The examiner disagrees and notes that at Column 4, Lines 55-67 Vogel teaches various ways to providing a recommendation to the viewer.

Applicant further provides various definitions of a recommendation, however, as stated above, a definition from only Applicant's own specification or prior to when the invention is made will be considered for patentability of the claims. Even if the examiner

were to consider the definitions provided by Applicant, clearly the first definition (and possibly others) teach a recommendation provided by Vogel.

Referring to claims 169-170 and 171-172, see the examiner's rebuttal above.

Referring to claim 173, Applicant argues that Wachob does not store users' selections. The examiner disagrees and again notes Column 10, Lines 27-35 which clearly states that channel/commercial selections are recorded and sent back to the headend/advertisers.

Referring to claim 192, see the examiner's rebuttal in regards to claim 173.